

Fishery Conservation and Management

§ 648.160

(c) The minimum size in this section applies to the whole fish or any part of a fish found in possession (e.g., fillets), except that party or charter vessels possessing valid state permits authorizing filleting at sea may possess fillets smaller than the size specified if skin remains on the fillet and all other state requirements are met.

§ 648.148 Special management zones.

The recipient of a U.S. Army Corps of Engineers permit for an artificial reef, fish attraction device, or other modification of habitat for purposes of fishing may request that an area surrounding and including the site be designated by the MAFMC as a special management zone (SMZ). The MAFMC may prohibit or restrain the use of specific types of fishing gear that are not compatible with the intent of the artificial reef or fish attraction device or other habitat modification within the SMZ. The establishment of an SMZ will be effected by a regulatory amendment, pursuant to the following procedure:

(a) A SMZ monitoring team comprised of members of staff from the MAFMC, NMFS Northeast Region, and NMFS Northeast Fisheries Science Center will evaluate the request in the form of a written report, considering the following criteria:

- (1) Fairness and equity;
- (2) Promotion of conservation;
- (3) Avoidance of excessive shares;
- (4) Consistency with the objectives of Amendment 9 to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan, the Magnuson-Stevens Act, and other applicable law;
- (5) The natural bottom in and surrounding potential SMZs; and
- (6) Impacts on historical uses.

(b) The MAFMC Chairman may schedule meetings of MAFMC's industry advisors and/or the SSC to review the report and associated documents and to advise the MAFMC. The MAFMC Chairman may also schedule public hearings.

(c) The MAFMC, following review of the SMZ monitoring teams's report, supporting data, public comments, and other relevant information, may recommend to the Regional Administrator that a SMZ be approved. Such a recommendation will be accompanied by all relevant background information.

(d) The Regional Administrator will review the MAFMC's recommendation. If the Regional Administrator concurs in the recommendation, he or she will publish a proposed rule in the FEDERAL REGISTER in accordance with the recommendations. If the Regional Administrator rejects the MAFMC's recommendation, he or she shall advise the MAFMC in writing of the basis for the rejection.

(e) The proposed rule to establish a SMZ shall afford a reasonable period for public comment. Following a review of public comments and any information or data not previously available, the Regional Administrator will publish a final rule if he or she determines that the establishment of the SMZ is supported by the substantial weight of evidence in the record and consistent with the Magnuson-Stevens Act and other applicable law.

[76 FR 60638, Sept. 29, 2011]

EFFECTIVE DATE NOTE: At 76 FR 60638, Sept. 29, 2011, § 648.148 was added, effective October 31, 2011.

§ 648.149 Black sea bass framework adjustments to management measures.

(a) *Within season management action.* See § 648.110(a).

(1) *Adjustment process.* See § 648.110(a)(1).

(2) *MAFMC recommendation.* See § 648.110(a)(2)(i) through (iv).

(3) *Regional Administrator action.* See § 648.110(a)(3)(i) through (iii).

(4) *Emergency actions.* See § 648.110(a)(4).

(b) [Reserved]

[76 FR 60639, Sept. 29, 2011]

EFFECTIVE DATE NOTE: At 76 FR 60639, Sept. 29, 2011, § 648.149 was added, effective October 31, 2011.

Subpart J—Management Measures for the Atlantic Bluefish Fishery

SOURCE: 65 FR 45852, July 26, 2000, unless otherwise noted.

§ 648.160 Catch quotas and other restrictions.

The fishing year is from January 1 through December 31.

(a) *Annual review.* On or before August 15 of each year, the Bluefish Monitoring Committee will meet to determine the total allowable level of landings (TAL) and other restrictions necessary to achieve the appropriate target fishing mortality rate (F) specified in the Atlantic Bluefish FMP. In determining the TAL and other restrictions necessary to achieve the appropriate F, the Bluefish Monitoring Committee will review the following data, subject to availability: Commercial, recreational, and research catch data; current estimates of fishing mortality; stock status; recent estimates of recruitment; virtual population analysis results; levels of noncompliance by fishermen or individual States; impact of size/mesh regulations; discards; sea sampling data; impact of gear other than otter trawls and gill nets on the mortality of bluefish; and any other relevant information.

(b) *Recommended measures.* Based on the annual review and requests for research quota as described in paragraph (h) of this section, the Bluefish Monitoring Committee shall recommend to the Coastal Migratory Committee of the Council and the Commission the following measures to ensure that the F specified in paragraph (a) of this section will not be exceeded:

- (1) A TAL set from a range of 0 to the maximum allowed to achieve the specified F.
- (2) Research quota set from a range of 0 to 3 percent of TAL.
- (3) Commercial minimum fish size.
- (4) Minimum mesh size.
- (5) Recreational possession limit set from a range of 0 to 20 bluefish to achieve the specified F.
- (6) Recreational minimum fish size.
- (7) Recreational season.
- (8) Restrictions on gear other than otter trawls and gill nets.
- (9) Changes, as appropriate, to the Northeast Region SBRM, including the CV-based performance standard, fishery stratification, and/or reports.

(c) *Allocation of TAL*—(1) *Recreational harvest limit.* A total of 83 percent of the TAL will be allocated to the recreational fishery as a harvest limit. If research quota is specified as described in paragraph (h) of this section, the recreational harvest limit will be based

on the TAL remaining after the deduction of the research quota.

(2) *Commercial quota.* A total of 17 percent of the TAL will be allocated to the commercial fishery as a quota. If 17 percent of the TAL is less than 10.5 million lb (4.8 million kg) and the recreational fishery is not projected to land its harvest limit for the upcoming year, the commercial fishery may be allocated up to 10.5 million lb (4.8 million kg) as its quota, provided that the combination of the projected recreational landings and the commercial quota does not exceed the TAL. If research quota is specified as described in paragraph (h) of this section, the commercial quota will be based on the TAL remaining after the deduction of the research quota.

(d) *Annual fishing measures.* The Council's Coastal Migratory Committee shall review the recommendations of the Bluefish Monitoring Committee. Based on these recommendations and any public comment, the Coastal Migratory Committee shall recommend to the Council measures necessary to ensure that the applicable specified F will not be exceeded. The Council shall review these recommendations and, based on the recommendations and any public comment, recommend to the Regional Administrator by September 1 measures necessary to ensure that the applicable specified F will not be exceeded. The Council's recommendations must include supporting documentation, as appropriate, concerning the environmental, economic, and social impacts of the recommendations. The Regional Administrator shall review these recommendations and any recommendations of the Commission. After such review, NMFS will publish a proposed rule in the FEDERAL REGISTER on or about October 15, to implement a research quota, a coastwide commercial quota, a recreational harvest limit, and additional management measures for the commercial and recreational fisheries to ensure that the applicable specified F will not be exceeded. After considering public comment, NMFS will publish a final rule in the FEDERAL REGISTER.

(e) *Distribution of annual commercial quota.* (1) The annual commercial quota

Fishery Conservation and Management

§ 648.160

will be distributed to the states, based upon the following percentages:

| ANNUAL COMMERCIAL QUOTA SHARES | |
|--------------------------------|------------|
| State | Percentage |
| ME | 0.6685 |
| NH | 0.4145 |
| MA | 6.7167 |
| RI | 6.8081 |
| CT | 1.2663 |
| NY | 10.3851 |
| NJ | 14.8162 |
| DE | 1.8782 |
| MD | 3.0018 |
| VA | 11.8795 |
| NC | 32.0608 |
| SC | 0.0352 |
| GA | 0.0095 |
| FL | 10.0597 |
| TOTAL | 100.0000 |

NOTE: The "Total" does not actually add up to 100.0000 because of rounding error.

(2) All bluefish landed for sale in a state shall be applied against that state's annual commercial quota, regardless of where the bluefish were harvested. Any overages of the commercial quota landed in any state will be deducted from that state's annual quota for the following year.

(f) *Quota transfers and combinations.* Any state implementing a state commercial quota for bluefish may request approval from the Regional Administrator to transfer part or all of its annual quota to one or more states. Two or more states implementing a state commercial quota for bluefish may request approval from the Regional Administrator to combine their quotas, or part of their quotas, into an overall regional quota. Requests for transfer or combination of commercial quotas for bluefish must be made by individual or joint letter(s) signed by the principal state official with marine fishery management responsibility and expertise, or his/her previously named designee, for each state involved. The letter(s) must certify that all pertinent state requirements have been met and identify the states involved and the amount of quota to be transferred or combined.

(1) Within 10 working days following the receipt of the letter(s) from the states involved, the Regional Administrator shall notify the appropriate state officials of the disposition of the request. In evaluating requests to transfer a quota or combine quotas, the

Regional Administrator shall consider whether:

(i) The transfer or combination would preclude the overall annual quota from being fully harvested.

(ii) The transfer addresses an unforeseen variation or contingency in the fishery.

(iii) The transfer is consistent with the objectives of the Bluefish FMP and Magnuson-Stevens Act.

(2) The transfer of quota or the combination of quotas will be valid only for the calendar year for which the request was made.

(3) A state may not submit a request to transfer quota or combine quotas if a request to which it is party is pending before the Regional Administrator. A state may submit a new request when it receives notification that the Regional Administrator has disapproved the previous request or when notification of the approval of the transfer or combination has been published in the FEDERAL REGISTER.

(4) If there is a quota overage among states involved in the combination of quotas at the end of the fishing year, the overage will be deducted from the following year's quota for each of the states involved in the combined quota. The deduction will be proportional, based on each state's relative share of the combined quota for the previous year. A transfer of quota or combination of quotas does not alter any state's percentage share of the overall quota specified in paragraph (e)(1) of this section.

(g) Based upon any changes in the landings data available from the states for the base years 1981-89, the Commission and the Council may recommend to the Regional Administrator that the states' shares specified in paragraph (e)(1) of this section be revised. The Council's and the Commission's recommendation must include supporting documentation, as appropriate, concerning the environmental and economic impacts of the recommendation. The Regional Administrator shall review the recommendation of the Commission and the Council. After such review, NMFS will publish a proposed rule in the FEDERAL REGISTER to implement a revision in the state shares. After considering public comment,

§ 648.161

NMFS will publish a final rule in the FEDERAL REGISTER to implement the changes in allocation.

(h) *Research quota*. See § 648.21(g).

[65 FR 45852, July 26, 2000, as amended at 66 FR 42162, Aug. 10, 2001; 70 FR 53970, Sept. 13, 2005; 73 FR 4756, Jan. 28, 2008; 76 FR 17793, Mar. 31, 2011]

EFFECTIVE DATE NOTE: At 76 FR 60639, Sept. 29, 2011, § 648.160 was revised, effective October 31, 2011. For the convenience of the user, the revised text is set forth as follows:

§ 648.160 Bluefish Annual Catch Limit (ACL).

(a) The Bluefish Monitoring Committee shall recommend to the MAFMC an ACL for the bluefish fishery, which shall be equal to the ABC recommended by the SSC.

(1) *Periodicity*. The bluefish fishery ACL may be established on an annual basis for up to 3 years at a time, dependent on whether the SSC provides single or multiple-year ABC recommendations.

(2) [Reserved]

(b) *Performance review*. The Bluefish Monitoring Committee shall conduct a detailed review of fishery performance relative to the ACL at least every 5 years.

(1) If the ACL is exceeded with a frequency greater than 25 percent (*i.e.*, more than once in 4 years or any 2 consecutive years), the Bluefish Monitoring Committee will review fishery performance information and make recommendations to the MAFMC for changes in measures intended to ensure the ACL is not exceeded as frequently.

(2) The MAFMC may specify more frequent or more specific ACL performance review criteria as part of a stock rebuilding plan following the determination that the bluefish stock has become overfished.

(3) Performance reviews shall not substitute for annual reviews that occur to ascertain if prior year ACLs have been exceeded, but may be conducted in conjunction with such reviews.

§ 648.161 Closures.

(a) *EEZ closure*. NMFS shall close the EEZ to fishing for bluefish by commercial vessels for the remainder of the calendar year by publishing notification in the FEDERAL REGISTER if the Regional Administrator determines that the inaction of one or more states will cause the applicable F specified in § 648.160(a) to be exceeded, or if the commercial fisheries in all states have been closed. NMFS may reopen the EEZ if earlier inaction by a state has been remedied by that state, or if commercial fisheries in one or more states

50 CFR Ch. VI (10–1–11 Edition)

have been reopened without causing the applicable specified F to be exceeded.

(b) *State quotas*. The Regional Administrator will monitor state commercial quotas based on dealer reports and other available information and shall determine the date when a state commercial quota will be harvested. NMFS shall publish notification in the FEDERAL REGISTER advising a state that, effective upon a specific date, its commercial quota has been harvested and notifying vessel and dealer permit holders that no commercial quota is available for landing bluefish in that state.

EFFECTIVE DATE NOTE: At 76 FR 60639, Sept. 29, 2011, § 648.161 was revised, effective October 31, 2011. For the convenience of the user, the revised text is set forth as follows:

§ 648.161 Bluefish Annual Catch Targets (ACTs).

(a) The Bluefish Monitoring Committee shall identify and review the relevant sources of management uncertainty to recommend ACTs for the commercial and recreational fishing sectors as part of the bluefish specification process. The Bluefish Monitoring Committee recommendations shall identify the specific sources of management uncertainty that were considered, technical approaches to mitigating these sources of uncertainty, and any additional relevant information considered in the ACT recommendation process.

(1) *Sectors*. The sum of the commercial and recreational sector-specific ACTs shall be less than or equal to the fishery level ACL. The Bluefish Monitoring Committee shall recommend any reduction in catch necessary to address management uncertainty, consistent with paragraph (a) of this section. A total of 83 percent of the fishery-level ACT will be allocated to the recreational fishery. A total of 17 percent of the fishery-level ACT will be allocated to the commercial fishery.

(2) *Periodicity*. ACTs may be established on an annual basis for up to 3 years at a time, dependent on whether the SSC provides single or multiple-year ABC recommendations.

(b) *Performance review*. The Bluefish Monitoring Committee shall conduct a detailed review of fishery performance relative to ACTs in conjunction with any ACL performance review, as outlined in § 648.160(b)(1) through (3).

§ 648.162 Minimum fish sizes.

If the Council determines through its annual review or framework adjustment process that minimum fish sizes